4:2 P.

SUPREME COURT OF THE UNITED STATES.

No. 140.

SAMPSON B. LORD AND GEORGE W. JENNESS, PLAINTIFFS IN ERROR,

vs.

JOHN GODDARD.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF NEW HAMPSHIRE.

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[GIDEON, Print.]

THE UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States, to the judges of the circuit court, holden within and for the district of New Hampshire, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between John Goddard, of Bangor, in the county of Penobscot, and State of Maine, plaintiff, and Sampson B. Lord and George W. Jenness, of Portsmouth, in the State of New Hampshire, defendants, in a plea of the case, manifest error has intervened, to the great damage of the said Lord and Jenness, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf; you are hereby commanded that, if judgment thereof be rendered, then under your seals *seals* you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national Government; that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of said Supreme Court, at Washington, this ninth day of October, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-sixth.

ALBERT R. HATCH, *Clerk.*

Allowed by LEVI WOODBURY,

Presid'g Judge in U. S. circuit, and Ass. Jus. of Sup. Ct. of United States.

UNITED STATES OF AMERICA,

District of New Hampshire, ss:

To John Goddard, of Bangor, in the county of Penobscot, and State of Maine, lumber dealer, and a citizen of said State of Maine, greeting:

Whereas there has issued from the Supreme Court of the United States a writ of error, bearing date on the ninth day of October, in the year of our Lord one thousand eight hundred and fifty, directed to the judges of the circuit court of the United States, holden in and for the district of New Hampshire, wherein it is suggested that, in the record and process, and also in the rendering of judgment, in a suit between yourself, as plaintiff, and Sampson B. Lord and George W. Jenness, both of Portsmouth, in said district of New Hampshire, defendants, in

a plea of the case, manifest error has intervened, to the great damage of the said defendants; and the said judges are by the said writ commanded, if judgment thereof be given, that, under their hands, distinctly and openly, they send the record and process on the suit aforesaid, with all things concerning them, together with the said writ, so that they have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

You, therefore, the said Goddard, are hereby notified of said writ of error, and of the filing of the same as aforesaid, and are cited to appear, if you see cause, at the said Supreme Court, to be holden as aforesaid, to make answer thereto.

Given under my hand and seal, at Portsmouth, this ninth day of October, A. D. 1850, in the seventy-sixth year of the independence of the United States of America.

[L. S.]

LEVI WOODBURY,

Presid'g Judge in U. S. circuit, and Ass. Justice of Sup. Ct. of United States.

DISTRICT OF MAINE, *ss:*

I have this day served the foregoing citation upon said John Goddard, by giving him in hand an attested copy of the same.

Dated at Bangor, this first day of November, 1850.

ICHABOD D. BARTLETT,
Deputy Marshal.

Fees: Service - - -	$2	00
Travel, 180 miles -	9	00
	$11	00

UNITED STATES OF AMERICA,
District of New Hampshire, ss:

At a circuit court of the United States, holden at Exeter, within and for said district of New Hampshire, on the eighth day of October, in the year of our Lord one thousand eight hundred and fifty.

Present, the honorable Levi Woodbury and Matthew Harvey, judges of said court.

Sampson B. Lord, of Portsmouth, in the county of Rockingham, and State of New Hampshire, ship carpenter, and George W. Jenness, of the same Portsmouth, cabinet maker, and both citizens of said State of New Hampshire, were summoned to answer to John Goddard, of Bangor, in the county of Penobscot, and State of Maine, lumber dealer, and a citizen of said State of Maine, in a plea of the case, for that the said Lord and Jenness, at said Portsmouth, on the twenty-eighth day of October, A. D. 1847, intending greatly to deceive the plaintiff, did wrongfully and deceitfully make and sign a letter of re-

commendation in favor of one E. K. West and one A. W. Daby, addressed to the plaintiff, in the words and figures following, to wit:

"To JOHN GODDARD, esq'r, Bangor, Maine.

SIR: We, the undersigned, have full confidence in Messrs. E. K. West and A. W. Daby, dealers in coal, lumber, lime, &c. They are men well worthy of credit, and good for what they wish to purchase. The bearer of this, Mr. E. K. West, is visiting your city for the express purpose of purchasing lumber for the New York market.

Yours, respectfully,

S. B. LORD,
GEORGE W. JENNESS.

Portsmouth, N. H., Oct. 28, 1847."

And the said Goddard avers, that, confiding in the statements contained in said letter, which was soon after the date thereof presented to him by the said E. K. West, and believing the same to be true, and not knowing to the contrary thereof, but relying upon and trusting to the declarations in said letter contained, he did there afterwards, on the ninth day of November, A. D. 1847, sell and deliver to the said E. K. West and A. W. Daby, a cargo of lumber, to the value of one thousand nine hundred and seventy dollars and twenty-nine cents, upon trust and a credit of four months, to them, the said West & Daby; whereas in fact the said West & Daby, at the time of making and signing the letter aforesaid, and at the time of the sale and delivery of said lumber, were not men well worthy of credit, and were not good for what they wished to purchase, and not safe to be trusted and given credit to in this respect, and the said Lord & Jenness well knew the same, to wit, at said Portsmouth; and the said plaintiff further says, that although said four months have long since passed, the said West & Daby have not paid the plaintiff the said sum of one thousand nine hundred seventy dollars and twenty-nine cents for said lumber, or any part of the same, but then were and still are wholly unable to pay the said sum, or any part thereof. And so the said Lord & Jenness deceived the plaintiff by the false statements and affirmations contained in said letter, and he thereby has been imposed upon, and wholly lost said lumber and the value thereof.

And also for that, on the ninth day of November, A. D. 1847, at a place called Bangor, to wit, at said Portsmouth, the said Lord & Jenness, intending to deceive and defraud the plaintiff, did wrongfully and deceitfully encourage and persuade the plaintiff to sell and deliver to one E. K. West, and one A. W. Daby, divers goods, wares, and merchandise, to wit, a cargo of lumber of great value, to wit, of the value of one thousand nine hundred seventy dollars and twenty-nine cents, upon trust and credit; and did for that purpose, on the twenty-eighth day of October, A. D. 1847, at said Portsmouth, make and sign a letter of writing, addressed to the plaintiff, wherein they, the said Lord & Jenness, assent and affirm to the plaintiff that the said West & Daby are

dealers in coal, lumber, lime, &c.; that they are men well worthy of credit, and good for what they wish to purchase; that the said West, the bearer of said letter or writing, was visiting the city of Bangor for the express purpose of purchasing lumber for the New York market; and the said Lord & Jenness did thereby falsely, fraudulently, and deceitfully cause and procure the plaintiff to sell and deliver the said lumber upon trust and credit to the said West & Daby; and in fact the plaintiff says, that he, confiding in and trusting and giving credit to the statements, assertions, and affirmations in said letter or writing contained, and believing the same to be true, and not knowing the contrary thereof, did on said ninth day of Nov., A. D. 1847, at said Bangor, to wit, at said Portsmouth, sell and deliver said cargo of lumber to the said West & Daby upon trust, and a credit of four months, to them, the said West & Daby; whereas, in fact, neither at the time of the making and signing of said letter, or writing, nor on said ninth day of November, A. D. 1847, were the said West & Daby men well worthy of credit, nor were they good for what they might wish to purchase, and were not persons safely to be trusted and given credit to in that respect; and the said Lord & Jenness well knew the same, to wit, at said Portsmouth; and the plaintiff further says, that the said West & Daby have not, though said four months have elapsed, nor hath any other person on their behalf, paid the plaintiff said sum of one thousand nine hundred [and] seventy dollars and twenty-nine cents, or any part thereof, for said cargo of lumber; but, on the contrary, the said West & Daby are wholly unable to pay the same, or any part thereof, to the plaintiff, to wit, at said Portsmouth; and so the said Lord & Jenness deceived the plaintiff, and thereby he has been imposed upon and wholly lost the said cargo of lumber, and the value thereof, to the damage of the said Goddard, as he saith, the sum of three thousand dollars.

This action was entered at the May term of this court, in the year of our Lord one thousand eight hundred and forty-eight, at which time comes the said Jenness, by his attorney, Albert R. Hatch, esquire, and defends, &c., when, &c., and says, that he is not guilty in manner and form as the plaintiff hath thereof above declared against him, and of this he puts himself upon the country; and the plaintiff doth the like, by James W. Emery, esq., his attorney; and the said Lord comes, by Albert R. Hatch, esq., his attorney, and defends, &c., when, &c., and saith, that he is not guilty in manner and form as the plaintiff hath thereof above declared against him, and of this he puts himself upon the country; and the plaintiff doth the like, by James W. Emery, esq., his attorney.

Issue being thus joined, the cause is continued, from term to term, to the May term of this court, in the year of our Lord one thousand eight hundred and fifty, when the cause is, after a full hearing, submitted to a jury, sworn, according to law, to try the same; who, after hearing all matters and things concerning the same, return their verdict therein, upon oath, that the defendants are guilty as declared against them, and assess damages in the sum of two thousand three

hundred dollars. And the cause is continued until this present term; when it is considered by the court that the said John Goddard have and recover of the said defendants the said sum of two thousand three hundred dollars, as damages, and costs of this suit taxed at

A true record.

ALBERT R. HATCH, *Clerk.*

I certify the foregoing to be a true copy of the record now remaining in the circuit court of the United States, for the district of New Hampshire.

In witness whereof I have hereunto set my hand, and the seal of said court, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty.

[SEAL.]

ALBERT R. HATCH, *Clerk.*

JOHN GODDARD
vs.
SAMPSON B. LORD & George W. Jenness.

Bill of exceptions.

Be it remembered that, at a term of the circuit court of the United States, holden at Portsmouth, within and for the district of New Hampshire, on the eighth day of July, in the year of our Lord one thousand eight hundred and fifty, by the honorable Levi Woodbury, esquire, associate justice of the Supreme Court of the United States, and the honorable Matthew Harvey, esquire, judge of the district court of the United States for said district, came John Goddard, of Bangor, in the county of Penobscot, and State of Maine, and, by an action on the case, declared against Sampson B. Lord and George W. Jenness, both of Portsmouth, in said district, and citizens of these United States, residing in said Portsmouth, as follows, to wit:

Writ.

UNITED STATES OF AMERICA,
New Hampshire district, ss:

The President of the United States of America, to the marshal of our district of New Hampshire, or his deputy, greeting:

[SEAL.]

We command you to attach the goods or estate of Sampson B. Lord, of Portsmouth, in the county of Rockingham, and State of New Hampshire, ship carpenter, and George W. Jenness, of the same Portsmouth, cabinet maker, and both citizens of said State of New Hampshire, to the value of three thousand dollars; and for want thereof, to take the bodies of the said Lord and Jenness, (if they may be found in your district,) and them safely keep, so that you have them before our judges of our circuit court, next to be holden at Portsmouth,

within and for our said district of New Hampshire, on the eighth day of May next, then and there in our said court to answer to John Goddard, of Bangor, in the county of Penobscot, and State of Maine, lumber dealer, and a citizen of said State of Maine, in a plea of the case:

Declaration.

For that the said Lord and Jenness, at said Portsmouth, on the twenty-eighth day of October, A. D. 1847, intending greatly to deceive the plaintiff, did wrongfully and deceitfully make and sign a letter of recommendation, in favor of one E. K. West and one A. W. Daby, addressed to the plaintiff, in the words and figures following, to wit:

To JOHN GODDARD, esq., *Bangor, Me.*

SIR: We, the undersigned, have full confidence in Messrs. E. K. West and A. W. Daby, dealers in coal, lumber, lime, &c. They are men well worthy of credit, and good for what they wish to purchase. The bearer of this, Mr. E. K. West, is visiting your city for the express purpose of purchasing lumber for the New York market.

Yours, respectfully,

S. B. LORD,
GEO. W. JENNESS.

PORTSMOUTH, N. H., *Oct.* 28, 1847.

And the said Goddard avers that, confiding in the statements contained in said letter, which was, soon after the date thereof, presented to him by the said E. K. West, and believing the same to be true, and not knowing to the contrary thereof, but relying upon and trusting to the declarations in said letter contained, he did there afterwards, on the ninth day of November, A. D. 1847, sell and deliver, to the said E. K. West and A. W. Daby, a cargo of lumber to the value of one thousand nine hundred [and] seventy dollars and twenty-nine cents, upon trust and a credit of four months to them, the said West and Daby; whereas, in fact, the said West and Daby, at the time of making and signing the letter aforesaid, and at the time of the sale and delivery of said lumber, were not men well worthy of credit, and were not good for what they wished to purchase, and not safe to be trusted and given credit to in this respect; and the said Lord and Jenness well knew the same, to wit, at said Portsmouth. And the said plaintiff further says, that, although said four months have long since passed, the said West and Daby have not paid the plaintiff the said sum of one thousand nine hundred [and] seventy dollars and twenty-nine cents, for said lumber, or any part of the same, but then were, and still are, wholly unable to pay the said sum, or any part thereof; and so the said Lord and Jenness deceived the plaintiff by the false statements

and affirmations contained in said letter; and he thereby has been imposed upon, and wholly lost said lumber and the value thereof.

And also for that, on the ninth day of November, A. D. 1847, at a place called Bangor, to wit, at said Portsmouth, the said Lord & Jenness, intending to deceive and defraud the plaintiff, did wrongfully and deceitfully encourage and persuade the plaintiff to sell and deliver to one K. H. West and one A. W. Daby divers goods, wares, and merchandise, to wit, a cargo of lumber of great value, to wit, of the value of one thousand nine hundred seventy dollars and twenty-nine cents, upon trust and credit; and did for that purpose, on the twenty-eighth day of October, A. D. 1847, at said Portsmouth, make and sign a letter or writing addressed to the plaintiff, wherein they, the said Lord & Jenness, assent and affirm to the plaintiff, that the said West & Daby are dealers in coal, lumber, lime, &c.; that they are men well worthy of credit, and good for what they wish to purchase; that the said West, the bearer of said letter or writing, was visiting the city of Bangor for the express purpose of purchasing lumber for the New York market; and the said Lord & Jenness did thereby falsely, fraudulently, and deceitfully, cause and procure the plaintiff to sell and deliver the said lumber upon trust and credit to the said West & Daby; and in fact, the plaintiff says, that he, confiding in, and trusting and giving credit to the statements, assertions, and affirmations in said letter or writing contained, and believing the same to be true, and not knowing the contrary thereof, did, on said ninth day of November, A. D. 1847, at said Bangor, to wit, at said Portsmouth, sell and deliver said cargo of lumber to the said West & Daby, upon trust and a credit of four months, to them, the said West & Daby; whereas, in fact, neither at the time of the making and signing of said letter or writing, nor on said ninth day of November, A. D. 1847, were the said West & Daby men well worthy of credit, nor were they good for what they wished to purchase, and were not persons safely to be trusted and given credit to in that respect, and the said Lord & Jenness well knew the same, to wit, at Portsmouth aforesaid. And the plaintiff further says, that the said West & Daby have not, though said four months have long since elapsed, nor hath any other person on their behalf, paid the plaintiff said sum of one thousand nine hundred seventy dollars and twenty-nine cents, or any part thereof, for said cargo of lumber; but, on the contrary, the said West & Daby are wholly unable to pay the same, or any part thereof, to the plaintiff, to wit, at said Portsmouth; and so the said Lord & Jenness deceived the plaintiff, and thereby he has been imposed upon, and wholly lost said cargo of lumber and the value thereof, to the damage of the said Goddard (as he says) the sum of three thousand dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings thereon.

Witness Roger B. Taney, esquire, at Portsmouth, the thirtieth day of March, anno domini 1848.

JOHN L. HAYES, *Clerk*.

Pleas.

NEW HAMPSHIRE, *ss:*

Circuit court of the United States, May term, A. D. 1848.

JOHN GODDARD
vs.
SAMPSON B. LORD & GEORGE W. JENNESS.

And now the said Lord comes and defends, &c., when, &c., and saith that he is not guilty in manner and form as the plaintiff hath thereof above declared against him, and of this he puts himself upon the country.

By his attorney: ALBERT R. HATCH.

And the plaintiff doth the like.

By his attorney: JAMES W. EMERY.

And now the said Jenness comes and defends, &c., when, &c., and saith that he is not guilty in manner and form as the plaintiff hath thereof above declared against him, and of this he puts himself upon the country.

By his attorney: ALBERT R. HATCH.

And the plaintiff doth the like.

By his attorney: JAMES W. EMERY.

And thereupon issue was joined between the said parties, and came on to be tried before the said circuit court, at the term thereof herein first before mentioned, by a jury for that purpose duly empannelled.

And the said plaintiff, then and there to maintain and prove the issue on his part, submitted to the court and jury, as evidence thereof, the documents, depositions, and oral testimony as follows, to wit:

1st. The plaintiff produced in evidence to the court and jury the letter of recommendation signed by the defendants; which letter is in the words and figures following, to wit:

"To JOHN GODDARD, esq., Bangor, Me.

SIR: We, the undersigned, have full confidence in Messrs. E. K. West and A. W. Daby, dealers in coal, lumber, lime, &c. They are men well worthy of credit, and good for what they wish to purchase. The bearer of this, Mr. E. K. West, is visiting your city for the express purpose of purchasing lumber for the New York market.

Yours, very respectfully,

S. B. LORD,
GEO. W. JENNESS.

PORTSMO., N. H., *Oct. 28th*, 1847."

The signatures, execution, and delivery of the preceding document or letter were respectively admitted by the parties to said suit.

The plaintiff produced the deposition [of] Michael Murphy, which is truly and exactly copied as follows, to wit:

Interrogatories on the part of the plaintiff.

UNITED STATES OF AMERICA,
New Hampshire district, ss:

Circuit court of the United States for said district.

JOHN GODDARD, pl'ff,
vs.
GEORGE W. JENNESS & SAMPSON B. LORD, def'ts.

Interrogatories to be administered to witnesses to be produced, sworn, and examined, on the part and behalf of the plaintiff, in the above entitled cause pending in said court.

First interrogatory. What is your name, occupation, and place of residence; do you know the parties plaintiff and defendants in the above entitled cause, or any or either of them; and how long have you known them?

Second interrogatory. Do you know one E. K. West, or one A. W. Daby, or either of them; and how long have you known them? State whether or not they were in November or October, A. D. 1847, dealers in coal, lumber, and lime in New York; state fully and particularly all you know concerning them, or either of them.

Third interrogatory. Do you or not know anything about the property of the said West & Daby, or either of them? If yea, state particularly all you know about their property, their credit, their business habits, their ability to pay their debts, or meet their engagements; or property, credit, business habits, and ability of either of them.

Fourth interrogatory. State whether or not in October or November, A. D. 1847, or March, A. D. 1848, said West & Daby, or either of them, were good for what they wished to purchase; whether or not they, or either of them, were worthy of credit, or able to pay their debts; state fully and particularly all the facts within your knowledge in relation to the subject matter of this interrogatory.

Fifth interrogatory. Do you or not know whether the said West and Daby were ever acquainted with the defendants or either of them? If yea, state when they first became acquainted, and all the facts within your knowledge upon this subject.

Sixth interrogatory. Do you or not know whether the said West & Daby, or either of them, were ever acquainted with the plaintiff? If yea, state when they first became acquainted, and all the facts and circumstances within your knowledge upon this subject.

Seventh interrogatory. Do you know, or can you set forth, any other matter or thing which may in anywise tend to the benefit of the plaintiff in this cause? If so, set forth the same fully and particularly, with all the particulars and circumstances thereof according to the best of your knowledge.

JOHN GODDARD,
By JAMES W. EMERY,
His attorney.

Additional interrogatories to be administered to witnesses to be produced, sworn, and examined on the part of the plaintiff in the same cause:

Interrogatory 1. Where do you reside; what is your occupation; do you know the parties to this suit, or either of them?

Interrogatory 2. Do you know either of the following named persons, to wit, Benjamin S. Brooks, of the city of New York, councillor at law, John A. Mitchell, of said city, merchant; William C. Atwell, of said city, broker; George Scardefield, of said city, guilder of picture frames; and are you acquainted with the reputation of either of them for truth and veracity, and which?

Interrogatory 3. What is the general reputation of any or either of said persons for truth and veracity?

Interrogatory 4. From what you know of the general reputation for truth and veracity of any or either of the above named persons, would you believe such person under oath as soon as you would men in general.

Interrogatory 5. State any other matter or thing which is within your knowledge which may tend to show what is the reputation of either of the above named persons for truth and veracity, or which may tend to show the credibility of the testimony of such person as a witness under oath.

JOHN GODDARD,
By JAMES W. EMERY,
His attorney.

Deposition of Michael Murphy, a witness produced, sworn, and examined by me on oath on the second day of May, A. D. 1849, at No. 6, Wall street, in the city of New York, under and by virtue of the commission hereto annexed, issued in a certain cause pending in the circuit court of the United States, within and for the New Hampshire district, wherein John Goddard, of Bangor, in the State of Maine, is plaintiff, and Sampson B. Lord and George W. Jenness, both of Portsmouth, in the State of New Hampshire, are defendants.

The said Michael Murphy deposes as follows:

To the first interrogatory he says:

My name is Michael Murphy; my residence Pottsville, Pennsylvania, and I am a coal dealer, which I have been for twenty years; I don't know either of the parties.

To the second interrogatory he saith:

I don't know Daby; I know Ephraim K. West; I have known West since 1845, I think; I know West was a coal dealer in 1845 and 1846, but cannot tell whether he was a dealer in coal in New York in October or November, 1847, or not; I sold a considerable amount of coal to West in 1845, which he never paid for; he bought coal of me in 1845, which I put on board of vessels at Philadelphia; he obtained the coal on fraudulent representations; he had letters of recommenda-

tion from a house in Boston to houses in New York and Philadelphia, and on the foundation of those letters he obtained credit. About the house in Philadelphia I made inquiries, and found it to be a house in fair standing there, and the house in New York was also, from what I learned there. He instructed me to draw on him for the latter shipments at one and three days sight; when the coal was shipped the bills of lading were sent to him, and so soon as he received them he assigned them to Charles Kelsey, a Wall street broker; several cargoes were on the way here when he (West) absconded to Boston, and he had received the bills of lading before he left. I sold him about three thousand dollars worth of coal, and no part of it has been paid, excepting the first draft for two hundred dollars. On the 3d day of December, 1845, I came on to New York, and found that West had transferred to Kelsey, and fraudulently put out of his possession, without a valuable consideration, except a mere nominal sum, all the coal, fixtures, utensils, and lease of the coal yards which he occupied, and which he had represented to me belonged to him. I don't know of his being in any business since then, except that he and some other person kept a refectory somewhere in Wall street, in the city of New York. After the above transfer I sent for him to Boston, and had him brought back and gave him a bond that I would not trouble him; those were the only terms on which I could get him to come back. The object was to get from him a true statement of his affairs, so that I might reach the property.

To the third interrogatory he saith:

I don't know any thing about their property, except as above stated. I know nothing about Daby. The habits of West were bad, so far as dissipation went. He had no credit, to my knowledge, except what was obtained in the manner above stated. From what I could learn of his credit here, I should think he had none here after he absconded. I know that West had obtained coal from R. Ives & Co., in Philadelphia, on the same credit and representations as above stated in regard to myself, to the amount of between $1,300 and $1,500.

To the fourth interrogatory he saith:

I don't believe that West could, at any time after these transactions took place, have obtained credit from any one that knew him or had heard of him. I should say that West was not entitled to credit after December, 1845, and that he could not pay his debts; and if he could, I do not believe he would.

To the fifth interrogatory he saith:

I don't know any of the parties to this suit, nor any thing about them.

To the sixth interrogatory he saith:

I don't know anything about the plaintiff.

To the seventh interrogatory he saith:

I cannot say anything more than I have already said, that I am aware of, which would be of any benefit to either party.

To the additional interrogatories hereto annexed, the said Michael Murphy deposes as follows:
To the first additional interrogatory he saith:
I have already answered this.
To the second additional interrogatory he saith:
I don't know any of them.
To the third additional interrogatory he saith:
I don't know.
To the fourth additional interrogatory he saith:
I don't know anything at all about them.
To the fifth additional interrogatory he saith:
I don't know anything about the matters contained in this interrogatory.

M. MURPHY.

Draft of John Goddard, drawn on West & Daby.

Four months after date, please pay to my own order, Suffolk Bank, Boston, 1,970.29, and place the same to the account of,

Your obedient servant,

JOHN GODDARD.

Messrs. WEST & DABY, N. Y.

Accepted. WEST & DABY,
76, *Front st., N. Y.*

Endorsed— JOHN GODDARD.

Protested for non-payment, March 11, 1848.

The signatures to draft, acceptance, and endorsement, admitted by the parties to this suit.

John P. Bent, witness upon the stand.

I have known more or less of Augustine W. Daby from his boyhood—say for the last ten years. He is about 26 or 27 years of age. I knew him in 1846; he was then in business in Boston. Commenced that spring, 46 India street, wine dealer. I went to Boston about the 1st January, 1847; did not see Daby thereafter. Copeland had taken his store in 1847. I saw Daby in N. Y. in July, 1848; did not see him between March, 1847, and July, '48. The general report in Boston was, that he went away and left his debts unpaid. I now reside in Bangor, and have resided there two months.

Franklin Copeland, witness upon the stand.

I am a merchant, 47 India street; firm F. Copeland & Co.; my first

acquaintance with Daby was while he was clerk, he took the store I now occupy, 47 India street; he hired the store of my father; he and others occupied the store about a year; he paid two quarters rent; December 1, 1846, I took a bill down to him; he came up and paid $100; sometime after that, I found a boy there that called himself a brother-in-law of Daby; from a month to a month and a-half after December 1, 1846, called, and did not find Daby; in March carried another bill; Daby's reputation and credit at the time he left generally bad; he had quit Boston and left his debts unpaid.

Henry Howland, witness upon the stand.

I reside in Charlestown; do business in Boston, 13 India street; in 1846, Daby was indebted to our firm, on notes, about the sum of $300; and on account $50 or $60; notes dated January 18, September 10, September 23, 1846, all in six months; his place of business was 47, India street; nothing has ever been paid upon these claims; I should not think he had any credit in Boston after 1847.

And the plaintiff introduced further testimony, which tended to show that West and Daby were at the recommendation, and for some time before, in insolvent circumstances, and that Lord had means to know it; but if he did not, nor Jenness, it was probable they were entirely ignorant of their situation, except what came by letter from the son of Lord, hereafter put in this case; that West brought no certificate of credit in their favor from New York or elsewhere to Portsmouth, and that Lord's son had failed in business, and was unworthy of belief; and thereupon the plaintiff rested his case.

The defendants to support and prove the issue on their part, offered in evidence to the court and jury documents, depositions, and oral testimony, as follows:

Deposition of Robert McGaw.

Interrogatories to be propounded to witnesses to be produced, sworn, and examined on the part of the defendants, in an action now pending in the circuit court of the United States, within and for *for* the district of New Hampshire, wherein John Goddard, of Bangor, in the State of Maine, is plaintiff, and George W. Jenness and Sampson B. Lord, both of Portsmouth, in the State of New Hampshire, are defendants.

Interrogatory 1st. Where do you reside; what is your occupation; and do you know the parties in this suit, and which of them?

Inter. 2d. Do you know E. K. West and A. W. Daby, now or formerly of the city of New York, and did you know them in the fall of the year 1847, and particularly in the months of October and November of that year; what was their business or occupation; where; how was their business conducted, and under what firm or name?

Inter. 3d. Had you any connexion with that firm in the fall of the year 1847; or had you business transactions with them; if yes, of what nature, or how *was* you connected with said firm?

Inter. 4th. What was the business standing and credit of said firm in the fall of the year 1847; and particularly in the months of October

and November in that year; what property had they in their possession; and please designate the kind and amount thereof; what was their ability to pay their debts; and to what extent were they good for what they wished to purchase? Please state fully such facts as are within your knowledge relating to the foregoing questions.

Inter. 5th. Do you know any thing of a cargo of lumber purchased in the fall of 1847, by said West and Daby, or either of them, of said John Goddard; *was* you present at the time the said lumber was purchased, or have you had any conversation with said Goddard in regard to the sale of said lumber by him? If yea, state what were the circumstances of said sale, and how, or on what representations was said Goddard induced to make said sale, and who was present. Or state what said Goddard has told you in regard to said sale. Do you know any thing in respect to the delivery of said lumber to West and Daby, and how and when it came into their possession; what was the quantity and quality of said lumber, and how far was the same in accordance with the terms of sale; and how was said lumber disposed of by said West and Daby, and when, and why?

Interrogatory 6th. Do you know any thing of a note or draft for $1,970 29, or thereabouts, given by said West and Daby to said Goddard for said lumber? If yes, state what you know of it, and whether the same has been paid, or any part of it; and if not, why the same has not been paid.

Interrogatory 7th. Where was said West in the winter of 1847 and 1848, and the spring following; did he attend to the business of said firm; and if not, why not?

Interrogatory 8th. Have you conversed with John Goddard aforesaid, the plaintiff, in relation to this suit; and when? And state what testimony he requested you to give, and what inducement did he offer to you so to testify; and state whether you accepted his offer; and if not, why not.

Interrogatory 9th. Do you know any other matter or thing which may benefit the defendants in this suit? If so, state the same.

GEO. W. JENNESS,
For defendants.

Cross interrogatories to be propounded to witnesses to be produced, examined, and sworn on the part of the defendants, in an action now pending in the circuit court of the United States, for the district of New Hampshire, wherein John Goddard is plaintiff, and Sampson B. Lord and George W. Jenness are defendants, to the direct interrogatories filed by the said defendants on the seventh day of April, A. D. 1849.

Cross interrogatory 1. State how long you have known E. K. West and A. W. Daby, or either of them; state whether they have or not, or either of them, been in several kinds of business for the last ten years; how many and what kinds of business; whether or not they, or either of them, have lived in several different towns and cities; and how many and what kinds of business. State fully and particularly all you know

of either as to business; and if you know any thing about how their business was conducted, state how you know the facts you state.

Cross interrogatory 2. If you ever had any business transactions with said West & Daby, or either of them, state fully and particularly all the transactions you had with them, or either of them, from the beginning to the end of the same.

Cross interrogatory 2. If you know any thing of their business habits and credit in October or November, 1847, state how you know the same; and how you know any thing about their property, and about their ability to pay their debts; and how you know any thing about their being good for what they might wish to purchase.

Cross interrogatory 4. If you know any thing about a purchase of a cargo of lumber by said West & Daby in 1847, state how you know it, and all your means of knowledge; if you had any conversation with said Goddard about said sale, state the whole of the conversation, and as near as you can the language used; the place where said conversation took place; the time when, and who was present; and state fully and particularly how you know any and all the facts you undertake to state.

Cross interrogatory 5. If you know any thing about the matters inquired about in the sixth and seventh direct interrogatories, state your means of knowledge, how you know the same, and fully and particularly all you know about the same.

Cross interrogatory 6. If you have had any conversation with said Goddard about this suit, state the same; state the whole conversation; the time when said conversation took place, and the place where; and state fully and particularly, as you are able, the words used by said Goddard during said conversation; state all the conversation which took place, and who were present at the time; and state fully and particularly all that took place at the time.

Cross interrogatory 7. Do you know any matter or thing which may benefit the plaintiff in this suit? If so, set forth the same as fully as if particularly interrogated thereto.

JOHN GODDARD,
By JAMES W. EMERY,
His attorney.

Deposition of Robert McGaw, a witness produced, sworn, and examined on oath, on the fourth day of May, A. D. 1849, at No. 6, Wall street, in the city of New York, under and by virtue of the commission hereto annexed, issued in a certain cause pending in the circuit court of the United States, within and for the New Hampshire district, wherein John Goddard, of Bangor, in the State of Maine, is plaintiff, and Sampson B. Lord and George W. Jenness, both of Portsmouth, in the State of New Hampshire, are defendants.

The said Robert McGaw doth depose as follows:

To the first interrogatory he saith:

I reside in Jersey city, in the State of New Jersey; I am a ship-broker

and commission merchant; I do not know any of the parties to this suit.

To the second interrogatory he saith:

I know them both; I think I knew them at that time. I have no doubt that I did, but cannot say positively; they were commission merchants, doing business at the corner of Old slip and Front street, in an office up stairs; on the sign was "West & Daby," to the best of my memory, or "Daby & West;" I know that both names were on the signs on the premises. I was in the habit of calling there; their business was conducted as usual among merchants; I never saw any thing different.

To the third interrogatory he saith:

They applied to me about that time, I think, for a vessel to carry lumber to South America; the lumber, as I understood, was at Providence, and was to be shipped from thence to Rio Janeiro, or some other port in South America. I procured a vessel and sold it to them, as per agreement hereto annexed. John A. Mitchell said he was owner of the vessel, and authorized me to sell her. The vessel was the bark Chancellor mentioned in said agreement.

Ruled out by the court. [The bargain was not carried out, as West & Daby, or one of them, said, because she had received damage by a steamboat after the bargain was made.]

I know of the vessel receiving the damage, and that it was after the bargain was made;

Ruled out by the court. [and I believe it was because Mitchell refused to allow for the said damage that the first payment was not made.]

Nothing further was done with the matter on my part. I received one dollar as part of my commissions, and that is the dollar mentioned in said agreement. West & Daby paid that dollar. I was one of the subscribing witnesses to the said agreement, and saw both parties sign it, and the signature Robt. McGaw is in my handwriting.

To the fourth interrogatory he saith:

I know nothing about their business standing and credit at that time. I know nothing in regard to the matters inquired of in this interrogatory.

To the fifth interrogatory he saith:

I don't know any thing about those matters.

To the sixth interrogatory he saith:

I know nothing about it.

To the seventh interrogatory he saith:

He did occasionally attend to the business of said firm during that time, but did not regularly on account of illness, and appeared to be a great invalid. He was trading in New York during that winter, as I understood. I saw him a number of times during the winter here.

Ruled out by the court. He was seldom down town early in the day, for the reason, (as I was told on inquiring at his office, that he was very ill,) and some days, I believe, he was not there at all. I have been there sometimes three or four times in a day without seeing him.

To the eighth interrogatory he saith:

I never have conversed with him at all, and never had any communication with him whatever.

To the ninth interrogatory he saith:

Mr. West appeared honorable in his engagements with Mr. Mitchell, in relation to the purchase of the bark Chancellor, and punctual in his appointments at interviews.

To the cross interrogatories hereto annexed the said Robert McGaw doth depose as follows:

To the first cross interrogatory he saith:

I have known them from about the time of that transaction, the sale of the Chancellor, until within about six or eight months past. I know nothing about the kinds of business in which they have been engaged. My acquaintance with them has never been of such intimacy as to give me an opportunity of knowing any thing about their places of residence, or about them, except what has been before stated.

To the second cross interrogatory he saith:

The transaction above set forth is the only one I ever had with them.

To the third cross interrogatory he saith:

I have no reason to know, neither do I know, any thing about them. From what I saw of them I had no doubt of their being honorable men; all that I know about them is in connexion with this transaction.

To the fourth cross interrogatory he saith:

I know nothing about it.

To the fifth cross interrogatory he saith:

I know nothing about the matters inquired of in the sixth direct interrogatory; I don't know that I can add any thing to the answer already made to the seventh direct interrogatory.

To the sixth cross interrogatory he saith:

I never had any such conversation.

To the seventh cross interrogatory he saith:

I know nothing that would be of any advantage to the plaintiff that I am aware of.

ROBERT McGAW.

And the defendants offered the following among other testimony of witnesses examined before the court and jury.

George W. Towle, witness upon the stand.

I never served a writ, George W. Jenness vs. Sampson B. Lord. I have no knowledge whatever of any process, George W. Jenness vs. Sampson B. Lord. I heard something between Goddard and Jenness on the evening that the writ, Goddard vs. Lord and Jenness was served. Jenness said he had no business acquaintance and no business transactions with West & Daby; he had seen one of the gentlemen. I think he said he did not know personally whether they were worth $10 or

$10,000; he said he was induced to sign the letter on statements and representations made by Sampson B. Lord.

John Bennett, town clerk of Portsmouth, upon the stand.

I am town clerk of Portsmouth. I have examined the records of the town of Portsmouth from 1846 to 1849. It does not appear from any records or files in my office that any attachments have been made within these periods on any suit between George W. Jenness vs. Sampson B. Lord.

Charlotte H. Lord, a witness upon the stand.

I have seen this letter. I saw a letter at my father's house; it was brought there by Mr. West; he delivered it to my sister-in-law, Lydia M. Lord, and she to my father. I never saw West before; he was introduced to my father by my sister. I read the letter; it is in the handwriting of my brother, John H. Lord. I saw the letter lying upon the table afterwards, and read it; West was at our house several days; he went east some where. I knew that West made an application for a letter of recommendation. The following is a copy of the letter introduced in evidence:

Letter of John H. Lord.

NEW YORK, *October* 25, 1847.

DEAR FATHER: This will be handed you by my friend, Mr. E. K. West; he has, in connexion with Mr. Augustine W. Daby, established themselves in this city in the lumber, coal, and lime trade, and Mr. West is on his way to the east for the purpose of purchasing lumber, &c., and you would confer a favor on me by giving Mr. West letters to your friends in the east. Mr. West is a New Hampshire gentleman by birth, and with the means and abilities and attention to business which they will bring to bear, they cannot but be abundantly able to meet all their engagements that they may enter into at maturity, and any attention and civilities which you may show will be duly appreciated by your most obd't son.

JOHN H. LORD.

T. S. B. LORD, esq., *Portsmouth, N. H.*

Lydia M. Lord, a witness upon the stand.

My father-in-law first went to the city of New York in May, 1847. I went to the place where he went to see my husband. I never when I went there with my father saw E. K. West there; he was introduced to my father by me at Portsmouth. I knew West in New York. I asked my father to write a letter; there was a letter written. I wrote it myself; it is the letter of recommendation produced here, signed by my father-in-law, Sampson B. Lord and George W. Jenness. I cannot

recollect whether there was any conversation between my father-in-law Sampson B. Lord and myself, as to the form of the letter.

The defendants offered other testimony tending to rebut some of that introduced by the plaintiff, and to show that West & Daby were entitled to pecuniary credit at the time they were recommended, and if not, that the defendants were not likely to have known it.

And thereupon the defendants rested their defence; and the plaintiff, after the introduction of further testimony, rested his case.

Plaintiff's points of law.

The counsel for the defendants then prayed the honorable court to instruct the jury, that, in order to maintain the plaintiff's declaration, it must be proved that the representations made were false, and that the defendants made them knowing they were false, and intending to defraud the plaintiff; and that, if the defendants made the representations on such information as they believed to be true, whether that information was true or false, this action cannot be maintained. The defendants further requested the honorable court to charge the jury, that if the plaintiff had not proved to the satisfaction of the jury, either that the defendants gave the recommendation in this case knowing that it was false, and intending to defraud the plaintiff, or that they gave it without any information of the credit or means of West & Daby; or if the jury believe that the defendants gave such information respecting said West and Daby as said defendants believed to be true and sufficient, whether that information was true or false, and whether it was sufficient or not, the defendants were entitled to a verdict.

But the honorable court declined to do this, and did not charge the jury in the terms and manner, and to the extent prayed; but the honorable court did instruct the jury upon the subject matter so prayed for as follows: that, as a general rule, one ground upon which to maintain the plaintiff's declaration is, it must be proved that the representations made were false, and that the defendants made them knowing they were false, and intending to defraud the plaintiff; and that if the defendants made the representations on such information as they believed to be true, whether that information was true or false, the action cannot be maintained; but a party, if stating positively that a person is entitled to credit, should do it from his own knowledge, or from full and proper inquiries; and then he is not liable if the debtor is insolvent, unless the jury see circumstances in the case of real fraud. But, if a party state this positively as to the credit of an individual, and does it ignorantly, not knowing the credit of the person recommended, and without making full and proper inquiries, and the statements turn out to be false, the jury may infer that those so recommending did wrong, and deceived, because they must know that third persons are likely to rely on their stating what they personally know, or had duly inquired about, or what they had good reason to suppose their information as to it was sufficient and true. If the defendants in this case did not make

the recommendation upon such authority or information as you may think under the instructions they ought to have acted upon, you will charge them.

Whereupon the counsel for the defendants did then and there except to the aforesaid refusal, and the instructions and charge of the hon. court, and thereupon the jury returned a verdict for the said plaintiff, in the words and figures following, to wit:

Verdict.

United States circuit court, at Portsmouth.

May term, 1850.

In the action, John Goddard vs. Sampson B. Lord and George W. Jenness, the jury find the defendants guilty as declared against them, and assess damages in the sum of two thousand three hundred dollars.

AARON QUINBY,
Foreman.

Exceptions.

And inasmuch as the matters referred to, and the several instructions by the hon. court so objected to, do not appear by the record of the verdict aforesaid, the counsel on the part of said defendants pray the hon. court to set their seal to this bill of exceptions, containing the several matters proved and given in evidence, and the charge of his honor the judge thereupon, and the exceptions thereto.

All which being found to be true, in witness whereof I have hereunto set my hand and seal.

LEVI WOODBURY,
As. Just. of Sup. Ct. of United States. [SEAL.]

I, Albert R. Hatch, clerk of the circuit court of the United States, within and for the district of New Hampshire, do certify, that the foregoing thirty-nine sheets, written upon one side only, contain true copies of the bill of exceptions allowed in the action, John Goddard against Sampson B. Lord and George W. Jenness, heretofore pending in said court, and now remaining on file and of record in said court.

In witness whereof I have hereunto set my hand and the seal of said court, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty. [SEAL.]

ALBERT R. HATCH,
Clerk, &c.